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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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In the Matter of)
)
Policies and Rules Concerning)
Unauthorized Changes of)
Consumer's Long Distance Carriers.)
_____)

CC Docket No. 94-129

COMMENTS OF AIRTOUCH COMMUNICATIONS, INC.
REGARDING PETITIONS FOR RECONSIDERATION

AirTouch Communications, Inc. ("AirTouch"), by its undersigned attorneys, hereby strongly supports the petitions filed by AT&T, MCI, and Sprint that request that the Federal Communications Commission ("FCC" or "Commission") reconsider its decision in the above-captioned proceeding to impose new independent verification procedures on those interexchange carriers receiving customer-initiated calls that result in changing a customer's primary interexchange carrier ("PIC"). Although the Commission's initial decision to require these new verification procedures was well intended, the petitions for reconsideration should be granted because the effect of this new requirement will be anticompetitive and because it fails to address any significant "real world" problem.

AirTouch is a diversified telecommunications company providing cellular, paging, and other wireless services in many regions of the United States as well as Europe and Asia. During the past year, AirTouch has begun to offer its domestic cellular customers long distance service at a significant discount. This new service has been a great benefit for cellular customers not only because of the significant discounts, but also because customers get the convenience of having a single bill and having a single point of contact to resolve any billing or service related issues.

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AirTouch has used a variety of promotional tools to educate its customers about this new long distance option.¹ One of the most successful approaches used by AirTouch has been asking customers to order AirTouch long distance service by calling an AirTouch customer services representative. By taking such action, customers have the ability to have their questions answered promptly and, if they then decide to change long distance carriers, the conversion can be accomplished immediately. This process allows customers to begin immediately receiving their significant savings and the other benefits that come from using AirTouch's long distance services. It is this type of customer-friendly, prompt service that customers want and demand.

Unfortunately, under the Commission's new rules this easy, quick conversion process will be, as a practical matter, impossible to provide to our customers. Instead, the Commission's new rules would require AirTouch to use one of the four verification methods set forth in Section 64.1100 of the Commission's Rules whenever an existing customer calls AirTouch and requests that his or her PIC be changed. Those four approaches are either too expensive or otherwise impractical for use by local wireless carriers such as AirTouch that seek to convert those existing customers who voluntarily call them. For example, the volume of AirTouch's customer conversions is probably too small to justify the substantial expense of hiring an independent third party to confirm a customer's oral authorization. Similarly, obtaining customers' electronic authorizations by using an 800 number voice response unit is often impracticable since, among other things, such calls would often not be placed using the cellular telephone being converted (as customers usually call from their regular wireline home or business phone) and "recording the originating ANI"² from cellular phones is not always technically possible.

¹ Although AirTouch is not required to provide its customers with access to competing long distance carriers, it continues to do so because it believes that customers like having such choices.

² Section 64.1100 (b) of the Commission's Rules.

There are also substantial expenses and severe operational problems associated with carriers such as AirTouch using the 14 day verification letter for customer-initiated calls. Among other problems, the customer service software used by AirTouch cannot be used to delay the processing of PIC change orders for the necessary 14 to 17 days. Instead, such PIC conversions must be done manually -- a process that is very time consuming and expensive. For carriers such as AirTouch that provide long distance primarily as an "add-on" service for the convenience of our existing customers, it may be impossible to justify incurring the additional expense of making the software changes necessary to comply with the Commission's new rules. Finally, as the Commission has previously recognized, "consumers, as a practical matter, frequently [do] not execute the LOAs even though they agreed to change their PIC."³ Therefore, requiring carriers to obtain such LOAs before converting a customer who voluntarily and affirmatively requests such a change would be anticompetitive because it is likely that those customers would fail to sign and return the LOAs and, as a result, they "would remain presubscribed to the dominant IXC."⁴

The practical effect of imposing these expensive new verification rules on carriers such as AirTouch may be that AirTouch will not be able to continue to offer consumers the ability to easily switch PICs when an existing customer calls asking that we make such a change. Withdrawing this convenient service from the public will hurt both new competitive long distance carriers such as AirTouch and consumers -- without achieving any appreciable public benefit.

³ Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers (NPRM), 9 FCC Rcd 6885 (1994).

⁴ Id.

Although it is clear that “slamming” is a significant problem for the long distance industry, AirTouch agrees with AT&T,⁵ MCI,⁶ and Sprint⁷ that there is simply no such problem regarding customer initiated calls seeking to change their IXC’s. Like other cellular carriers that provide long distance services, AirTouch sees this issue from the perspective both as a “local” exchange carrier (that has an ongoing relationship with the consumer regardless of the PIC and who is also responsible for processing PIC change requests), and as an IXC competing to serve customers. In its capacity as a carrier that processes PIC change orders submitted by other IXC’s, AirTouch has not experienced any “slamming” related problems from customer-initiated PIC change calls. Because there does not appear to be any “slamming” related problems associated with these services, it seems clear that there would be little or no public benefit from extending the Commission’s telemarketing verification rules to cover customer-initiated calls made to switch PICs. However, the imposition of such rules will create substantial and unwarranted costs for carriers.⁸ Those unnecessary costs -- together with the likely result that some smaller carriers such as AirTouch will find it prohibitively expensive to have customers change IXC’s by telephone -- will mean that, as a practical matter, customers will be given fewer choices and that well-established, entrenched IXC’s will be subject to less competition from smaller, new entrants. Such a result would certainly not be in the public interest. As a result, the Commission should reconsider that portion of its new rules that would extend its telemarketing procedures to customer-initiated PIC change calls.

⁵ AT&T Petition for Limited Reconsideration, dated August 4, 1995, at 3 - 8.

⁶ MCI Petition For Limited Reconsideration, dated August 11, 1995, at 2 - 8.

⁷ Petition For Reconsideration, filed by Sprint Communications Company, dated August 9, 1995, at 2 -3, 5 - 8.

⁸ See, e.g., AT&T Petition at 8 - 12, MCI Petition at 8 - 10 and Sprint Petition at 12 - 13.

In deciding this issue, the Commission should also consider the fact that many multi-service carriers such as AirTouch,⁹ already have an ongoing relationship with the customer who calls. Unlike certain little known or unknown single-service IXCs that are merely seeking a quick buck, multi-service carriers such as AirTouch have no incentive to make their valuable existing customers unhappy by “slamming” them with unwanted long distance services. As a result, even if the Commission decides not to eliminate entirely its telemarketing verification rules for all customer-initiated calls, it should certainly exclude from those rules multi-service carriers, such as local wireless carriers, that already have an on-going business relationship with the customer.

Conversely, there is no basis whatsoever for the Commission to grant that part of the “Motion for Reconsideration By the National Association of Attorneys General Telecommunications Subcommittee” (“Motion”) that seeks “to modify section 64.1100(d)(8) to eliminate the negative option . . .”¹⁰ The Attorneys General are simply mistaken that Section 64.1100 (d) allows the use of a “negative option” letter of agency (“LOA”). A negative option LOA “requires a consumer to take some action to avoid a PIC change”¹¹ and is sent on an unsolicited basis to potential customers. In contrast, Section 64.1100 (d) applies only to consumers that have already taken affirmative action (*i.e.*, the customer has already affirmatively agreed that he or she wants to make a PIC

⁹ “Multi-service” carriers are those that provide consumers with different services, such as cellular, long distance, etc., when their customers could otherwise choose to use different carriers for each of those services.

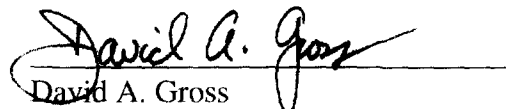
¹⁰ Motion at 2. See also Motion at 16 - 17

¹¹ Report and Order at para. 11 (emphasis omitted).

change) and does not involve the submission of LOAs.¹² Furthermore, adoption of this part of the Motion -- which would prevent IXC's from submitting PIC change orders unless they receive back the signed postcards -- would be inconsistent with the Commission's previous decision to allow IXC's to submit PIC change orders as long as they had "instituted steps to obtain signed LOAs" even if the IXC's never receive the LOAs.¹³ Finally, the Motion is not only unnecessary, unwise, and inconsistent with previous FCC decisions that have sought to promote fair competition, but also it would be unlawful as the Commission has never proposed to modify Section 64.1100 (d) to require that the prepaid postcards actually be signed and returned before a PIC change is processed.

Wherefore, for the foregoing reasons, the Commission should grant those petitions that request that the Commission reconsider its decision to extend its telemarketing rules to customer-initiated calls, but it should not grant that part of the Motion filed by the Attorneys General seeking to revise Section 64.1100 (d) of the Commission's Rules.

Respectfully submitted,


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September 8, 1995

¹² The Attorneys General are mistaken when they state that "[t]he postcard [used by IXC's in compliance with Section 64.1100(d)(7)] would ordinarily be an LOA." Motion at 17. The Commission's requirements for such postcards are very different than those for LOAs. Compare Section 64.1100 (a) (which sets forth the numerous requirements associated with an LOA) with Section 64.1100 (d) (which requires only that the postcard sent to the customer be postpaid and that it be used by the customer "to deny, cancel or confirm a service order.")

¹³ Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 935, 942 (1985).

CERTIFICATE OF SERVICE

I, Tina L. Murray, hereby certify that I have caused to be served on this 8th day of September 1995, via U.S. First Class Mail, postage prepaid, a copy of the foregoing "Comments of AirTouch Communications, Inc. Regarding Petitions for Reconsideration" to the following:

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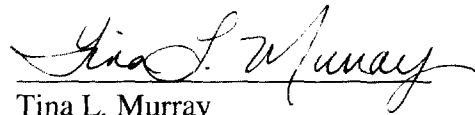
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